



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0268]

Hours of Service of Drivers: Trailways Companies, Application for Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Adirondack Trailways, Pine Hill Trailways, and New York Trailways (“Trailways”) for a renewal of their exemption from the hours-of-service (HOS) record of duty status (RODs) provision in 49 CFR 395.8(c). Trailways currently holds an exemption for the period of May 31, 2013 to May 31, 2015. FMCSA extended the exemption to include all regular-route passenger carriers and their drivers rather than limiting it to Trailways’ drivers. The renewal of the exemption would allow these drivers to perform their daily duties without having to record entries in the daily log for breaks in driving time of 10 minutes or less. Such activity would not be considered a change of duty status. FMCSA requests public comment on Trailways’ application for exemption.

DATES: If granted, this exemption would be effective during the period of May 31, 2015 to May 31, 2017. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0268 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Trailways' Application for Exemption

The HOS rule in 49 CFR 395.8(c) requires every commercial motor vehicle (CMV) driver to record his or her duty status for each 24-hour period using methods described in that section. Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements for up to a 2-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

Trailways offers scheduled passenger-carrier service throughout New York State and to the nearby Canadian cities of Montreal and Toronto. Trailways and all other regular route passenger carriers and their drivers were granted exemptions for the period May 31, 2013 to May 31, 2015. Trailways' initial application for relief from the HOS

RODs rule was submitted in 2012; a copy of the application is in the docket identified at the beginning of this notice. The 2012 application describes fully the nature of Trailways' operations.

Trailways' application for a renewal of the exemption is for fixed-route carriers and their drivers who are often away from the controls of the vehicle for less than 10 minutes to assist passengers or make passenger pick-ups and drop-offs along the route. Trailways' advised that until March 2011 they and other motor carriers had been operating in accordance with a 1996 interpretation of 49 CFR 395.8(c) issued by the Federal Highway Administration (FHWA). The 1996 interpretation allowed regular-route passenger carrier CMV drivers not to record a location entry on the driver's RODS for non-driving periods of less than 10 minutes. The RODS simply showed the stop as driving time. In March 2011, New York State officials began enforcing the rule literally, requiring that a change in duty status be entered on the log any time the driver leaves the operating controls of the CMV. Trailways was concerned that the violations would have a negative effect on the companies' and the drivers' Compliance Safety Accountability ratings, as well as schedules and passenger service because of the delays needed to make the entries.

Trailways therefore requested that their drivers with regularly scheduled routes be exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes.

Trailways noted that the exemption would reduce the amount of total time a driver can drive in a duty period. Without the exemption, the times drivers spend at stops to load passengers, freight, etc. would be logged as on-duty / not driving,

increasing the driving time available, but creating an additional administrative distraction every time the driver leaves the controls, regardless of the reason or the limited amount of time away from the vehicle controls. Trailways further advised that its carriers provide flag stops and that having to update the log at each flag stop increases the length of time the motorcoach may delay traffic while waiting for the pick-up and/or discharge of passengers and luggage, and then waiting for the driver to update the log. According to Trailways, in many instances the large number of brief stops will not fit on the log if the driver makes all of the required entries.

Trailways noted that the maximum possible driving time would be reduced and that traffic congestion could be reduced. FMCSA believes this would ensure that operations under the exemption would be at least as safe as operations that comply with the requirements on change of duty status.

As in 2013, FMCSA would apply the exemption, if granted, to all regular-route for-hire passenger-carrier drivers because they presumably operate in much the same manner as Trailways. Including all such drivers in the exemption will preclude the need for other carriers to file identical exemption requests, and will provide for consistent enforcement because the same provisions would be applied to all similar scenarios involving brief stops by drivers of these carriers during their regular-route operations.

A copy of Trailways' exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the Trailways' application for an exemption from certain provisions of the

driver's record of duty status rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Extent of the Exemption

The exemption would be restricted to drivers employed by Trailways and other regular-route for-hire passenger-carrier drivers. Instead of complying with the provisions in 49 CFR 395.8(c), these drivers would be exempted from changing their duty status from "driving" to "on-duty not driving" when making stops of less than 10 minutes. These drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

Terms of the Exemption

Period of the Exemption

The limited exemption from the HOS RODs requirements of 49 CFR 395.8(c) is proposed to be effective from 12:01 a.m. on May 31, 2015, through 11:59 p.m. on May 31, 2017.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption would be in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Trailways and other regular-route for-hire passenger-carriers would be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption.

The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number and State of issuance
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSPD@dot.gov.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: March 11, 2015

Larry W. Minor
Associate Administrator for Policy

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